



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 1289-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
XXX XX █/█ USMCR

Ref: (a) 10 U.S.C. § 1552
(b) Uniform Code of Military Justice
(c) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) counseling entry of 31 Jan 22
(3) █ memo, subj: Request to Remove 6105 ICO [Petitioner] dtd 11 Sep
2022

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting his naval record be corrected by removing enclosure (2).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 23 March 2023, and pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 31 January 2022, Petitioner was issued an Administrative Remarks (Page 11) entry counseling him for "conduct unbecoming of a Marine (Article 131)." Specifically, Petitioner's response to a leadership decision from the Commanding Officer and Company 1stSgt was unbecoming by being highly disrespectful while he was speaking and while making unprofessional comments. The Page 11, in detail, counsels Petitioner for additional disrespectful and unprofessional conduct. The entry does not contain language stating he was advised that within five working days after acknowledgement of the entry, a written rebuttal could be submitted which would be filed with the Page 11 in his Official Military Personnel File (OMPF). Additionally, the entry indicates Petitioner "refused to sign" the Page 11. See enclosure (2).

c. Petitioner contends enclosure (2) was erroneously submitted and discredits his character

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and position as a Staff Sergeant of Marines. As supporting evidence for his removal request, Petitioner submitted enclosure (3), a memo dated 11 September 2022 from the [REDACTED] Commanding Officer (CO) to Headquarters Marine Corps, Manpower Management Records and Performance Branch (MMSR-20) requesting removal of the 6105 from Petitioner's OMPF. The CO is not the same CO that signed enclosure (2).

d. The reference (b) article that addresses "conduct unbecoming" is Article 134, not Article 131 as stated in enclosure (2).

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded Petitioner's request warrants partial relief. In this regard, the Board noted enclosure (2) did not advise Petitioner that, within five working days after acknowledgement of the entry, a written rebuttal could be submitted which would be filed with the Page 11 in his OMPF. However, noting Petitioner refused to sign the Page 11 entry, which otherwise met the requirements of reference (c), the Board determined the error was immaterial.

The Board considered enclosure (3), but noting the request was submitted by a different CO, more than seven months later, with a justification that only stated "it was erroneously submitted to the member's OMPF," the Board declined to remove the Page 11 entry. The Board concluded the entry creates a permanent record of matters Petitioner's CO – at the time -- deemed significant enough to document and concluded there was insufficient evidence of an error or injustice warranting removal.

However, the Board noted the counseling entry erroneously states Article 131 and concluded it was in the interest of justice to redact the incorrect reference.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by redacting the following language from the Administrative Remarks (Page 11) counseling entry of 31 January 2022 at enclosure (2):
“(Article 131).”

That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and

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having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

4/14/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]